* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: April 10, 2018

\+ **W.P. (C) 7237/2007**
\+ **W.P. (C) 7238/2007**
\+ **W.P. (C) 7239/2007**
\+ **W.P. (C) 7240/2007**
\+ **W.P. (C) 7241/2007**
\+ **W.P. (C) 7242/2007**
\+ **W.P. (C) 7243/2007**
\+ **W.P. (C) 7244/2007**
\+ **W.P. (C) 7245/2007**
\+ **W.P. (C) 7246/2007**
\+ **W.P. (C) 7247/2007**

STATE BANK OF INDIA .....Petitioner

Through: Mr. Mukul Talwar, Senior Advocate with Mr. Rajiv Kapur and Ms. Khushboo Kapur, Advocates

versus

DEVESH KUMAR SHARMA
KEDAR NATH
SATISH KUMAR
MUKESH KUMAR
LALIT SHARMA
RAMESH LAL
RAM KISHAN SHARMA
VIJAY KUMAR SINGH
SANJAY KUMAR
RAM KUMAR
RAM CHET

.....Respondents

Through: Mr. Piyush Sharma, Advocate

\+ **W.P. (C) 8739/2009**

RAM CHET & ORS. .....Petitioners

Through: Mr. Piyush Sharma, Advocate

versus

STATE BANK OF INDIA .....Respondent

Through: Mr. Mukul Talwar, Senior Advocate with Mr. Rajiv Kapur and Ms. Khushboo Kapur, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 18th April, 2007 answers the Reference in favour of respondents-Workmen and directs petitioner-Bank to absorb respondents-Workmen within three months of the date of publication of the Award. In the above-captioned 11 petitions, quashing of impugned Award of 18th April, 2007 is sought, whereas in the above-captioned last petition, respondents-workmen in the above-captioned eight petitions, except respondents-*Ramesh Lal, Vijay Kumar Singh and Sanjay Kumar,* are petitioners who have sought backwages and continuity of service since the year 1994.

2. With the consent of learned counsel for the parties, the above-captioned twelve petitions, while treating W.P.(C) 7247/2007 as the lead matter, have been heard together and by this common judgment, these petitions are being decided.

3. The Reference sought by respondents-Workmen reads as under:

> *"Whether there is violation of Bipartite Settlement dated 27.10.1988 and 09.01.1990 between State Bank of India and All India SBI Staff Federation in preparing the panel of candidates and re-interviewing a few "unsuitable"*

candidates of first interview on 15.01.1994 and 19.01.1994 to the exclusion of others? If so, to what relief Shri Ram Chet, Sh. Vijay Kumar Sharma, Sh. Kedar Nath, Sh. Mukesh Kumar, Sh. Ram Lal, Sh. Ram Kumar, Sh. Sanjay Kumar, Sh. Ram Kishan Sharma, Sh. Lalit Sharma & Sh. Satish Kumar are entitled to and from what date."

Whether there is a violation of bipartite settlement dated 27.10.1988 and 07.01.1990 between State Bank of India and All India State Bank of India Staff Federation in preparing the panel of candidates of first interview on 15.01.1994 and 19.01.1994 by excluding others? If so, to what relief Shri Devesh Kumar is entitled to and from what date."

4. Impugned Award answers the Reference while holding that there is violation of Bipartite Settlements of 27th October, 1988 and 9th January, 1990 of State Bank of India and All India SBI Staff Federation. Respondents-Workmen had filed claim petitions assailing their non-absorption due to *mala fide* consideration and manipulation in preparation of the panel list drawn for absorption of workmen and being in violation of Bipartite Settlements of 27th October, 1988 and 9th January, 1990 of State Bank of India and All India SBI Staff Federation. In the Reply filed by petitioner-Bank to the claim petitions, the stand taken was that respondents-Workmen have not been found suitable for absorption by the Interview Committee. The stand taken in the Reply to the claim petition by petitioner-Bank is that no candidate was re-interviewed, but the entire result was reviewed. According to learned senior counsel for petitioner-Bank, upon review of the entire result, a list of the candidates who were interviewed for absorption has been appended alongwith writ petition,

which indicates the result of the interview in respect of all the interviewed candidates.

5. On the basis of the pleadings, *the Central Government Industrial Tribunal, New Delhi (hereinafter referred to as the 'Tribunal')* has categorized the workmen into three categories i.e. Category A, B & C. The Tribunal in impugned Award has observed that petitioner-Bank's witness had pleaded ignorance as to whether a panel list was prepared or not and has deposed that no supplementary panel list was drawn and thus concluded that the Interview Committee had violated the Bipartite Agreements in question, as the unsuccessful candidates were not intimated about the result of the Interview. Impugned Award notes that petitioner-Bank's witness had asserted in evidence that there was no requirement to display and intimate the result to candidates, who were successful/unsuccessful.

6. Regarding the competence of petitioner-Bank to review the result of the interview, petitioner-Bank's witness has pleaded ignorance. The discrepancies noticed by the Tribunal in impugned Award are six in number, which are as under: -

> *"1. It is quite vivid from the review sheet dated 15.01.1994 that Shri Vijender Kumar has worked for 660 days and in the interview conducted on 01.06.1992 he was found not suitable as his expression was not up to the mark. This candidate has again been selected on 15.01.1994 in view of length of his service.*
>
> *2. The list reveals that the candidates at Sl. No. 11 and Sl. No. 20 have worked for 397 days and 360 days have been found un-suitable at the time of their*

initial interview as there awareness was zero and they were found inactive and dull.

3. Shri Chhatr Singh has performed 359 days work. He was found un-suitable on 10.06.1992 as his awareness was poor. He was not selected even on 19.01.1994 as on review no change was found, whereas Shri Devinder Kumar has performed 102 days work and he was found un-suitable on the ground of his awareness being poor and he being unable to respond, in review he was found suitable on 19.01.1994 in view of length of service.

4. Shri Chhatr Singh has worked for 359 days still the interview committee did not find any change whereas Shri Devender Kumar has performed only 102 days work was found un-suitable on two points i.e. awareness poor and unable to respond and he has been selected in review on 19.01.1994 in view of length of his service. There is no remark that he has improved his awareness and strength of response. His long service has been the only ground for his suitable in review of 19.01.1994 whereas Shri Chhatar Singh who has performed 359 days work and there is only remark awareness poor but he has not been found suitable for permanent appointment.

5. Md. Mubeen appeared before the interview committee on 11.06.1992. He has worked for 86 days & was found un-suitable as his awareness was zero and he was unconversant with the bank's work. On 19.01.1994 during the review he was found suitable.

6. Shri Tej Pal figuring at 71 has worked for 58 days found un-suitable as he was dull and having complete lack of awareness. His case was reviewed on

19.01.1994 and he was found full of awareness and full of activity and he was found suitable."

7. The Tribunal in impugned Award has noticed that as per Office Note of 3rd December, 1993, another Committee was to review the result of the candidates, but the same Committee has reviewed the result, which reveals that *mala fide* practice was followed by the Interview Board and that no waiting-list was prepared or displayed and that the Interview Committee had not prepared panel of suitable candidates in the Categories A, B and C. The Tribunal has found that as per paragraph No.6 of Bipartite Settlements, the Interview Committee was to be constituted separately for separate zones comprising of Regional Manager, Administrative Officer and Branch Manager, but there was one Interview Committee and there was no zone-wise Interview Committees.

8. In impugned Award, there is a tabulated list, which contains the names of the candidates, who had worked for lesser number of days and were found suitable. Impugned Award also takes note of the chart, which indicates that 10 workmen, who had worked for 30 or 35 days have been found suitable, whereas 22 candidates, who had worked for more than 100, 200, 300 and 600 days have not been found suitable. The finding returned in impugned Award is that Sh. J.N. Kapoor, authorized representative of the Union, has espoused the cause of respondents-Workmen and so, the dispute raised was covered under Section 2(k) of *the Industrial Disputes Act, 1947*. The allegations of connivance between the Chairman and Selection Committee Member-Sh. S.K. Jain, regarding alteration and manipulation of the panel list, have been noticed in

impugned Award and the Tribunal has concluded that the Interview Committee had followed pick and choose discriminatory tactics in finding suitable candidates and has acted in an arbitrary and whimsical manner in violation of the aforesaid two Bipartite Settlements and has thus answered the Reference in favour of respondents-Workmen.

9. Learned senior counsel for petitioner-Bank has assailed impugned Award on the ground that espousal by Mr. J.N. Kapoor is invalid as he, in his evidence, has admitted that he has retired and is no longer a Member of the Union. It is pointed out that Mr. J.N. Kapoor had retired on 31st May, 1994 and had made espousal in the year 1998.

10. It is submitted on behalf of petitioner-Bank that the References made on 3rd May, 1999 and 9th November, 1999 are time barred as the interview result was declared in the year 1992 and its review was conducted in the year 1994. It is submitted that as per Article 137 of *the Limitation Act, 1963,* a Reference can be sought within three years of cause of action. To submit so, reliance is placed upon Supreme Court's decision in *Reserve Bank of India v. Gopinath Sharma and Another,* (2006) 6 SCC 221.

11. It is next submitted on behalf of petitioner-Bank that the basic Bipartite Settlement of 17th November, 1987 is not under challenge and the third and fourth Bipartite Settlements of 27th October, 1988 and 9th January, 1990 are amendments only and so, the Reference itself is bad. It is pointed out that amendment in the Bipartite Settlement was made on 9th January, 1991 and not on 9th January, 1990. It is pointed out that as per the amended Settlement of 27th October, 1988, chance of permanent absorption was to be given to casual/ad-hoc employees, which has been

already given. Learned senior counsel for petitioner-Bank asserts that the finding in impugned award regarding the result in question being vitiated by *mala fide* is not borne out from the evidence on record as no witness has stepped into the witness box to assert so.

12. It is also submitted on behalf of petitioner that respondents-Workmen had participated in the interview without any demur and so, they now cannot turn around and challenge impugned selection by asserting that the interview process was not conducted in terms of the aforesaid two Bipartite Settlements of 1988 and 1991. To submit that review of result was *bona fide*, attention of this Court is drawn to Note of 3rd December, 1993 appended to the written statement filed on behalf of petitioner-Bank before the Tribunal, which indicates that there were too many rejections by the interview committee and so, it was deemed proper to record the reasons for their non-suitability and since rejection in the interview was about 25%, therefore, the result was reviewed to bring down the number of rejections. It is pointed out that upon review of result, none of the selected candidates was rejected whereas upon review, 34 candidates were selected out of the rejected candidates. Learned senior counsel for petitioner-Bank has drawn attention of this court to evidence of Mr. B.N. Sharma, then Chief Manager (HR), who, in his evidence on behalf of petitioner-Bank, had disclosed that number of candidates called for the interview in June, 1992 were 398 and out of them, 375 candidates had appeared in interview and 301 candidates were selected and result of 74 candidates was reviewed in January, 1994. That is to say, that the result of candidates, who were not selected after the interview, was reviewed and upon review of the result, 34 candidates out of 74

candidates were found suitable for absorption and they were accordingly absorbed. In the evidence led on behalf of petitioner-Bank, it is averred that 11 respondents-Workmen had worked as casual labourers for a period ranging from 34 days to 85 days.

13. It is further submitted on behalf of petitioner-Bank that the discrepancies and *mala fide* noted by the Tribunal in impugned Award relate to candidates, who are not respondents-Workmen herein and are the candidates who were not selected in the interview and the case of respondents-Workmen vis-à-vis the selected candidates has to be considered, which has not been done by the Tribunal and so, impugned Award deserves to be set aside.

14. It is next submitted on behalf of petitioner-Bank that in terms of Bipartite Settlement of 30th July, 1996, petitioner-Bank has filled up all the vacancies identified upto 31st December, 1994 and thereafter, the select list regarding the interview in question had lapsed. It is averred for the first time in the writ petition that on the date of passing of impugned Award, there was no regular vacancy. So, it is submitted that otherwise also, impugned Award cannot be implemented. Lastly, it is submitted that respondents-Workmen had not worked for more than 240 days and so, they do not have any inherent legal right to be absorbed as regular workmen. Thus, it is submitted that impugned Award deserves to be quashed.

15. On the contrary, learned counsel for respondents-Workmen supports impugned Award and submits that since interview process for absorption of the workmen is in contravention of Bipartite Settlements of 1988 and 1991 and so, the Tribunal has rightly directed petitioner-Bank

to absorb respondents-Workmen. Attention of this Court is drawn to Section 2 (k) of *the Industrial Disputes Act, 1947* to submit that the dispute regarding employment and non-employment comes within the ambit of *'industrial dispute'* and so, respondents-Workmen were well within their right to seek the Reference, which is not time barred.

16. Attention of this Court is drawn by learned counsel for respondents-Workmen to the counter affidavit filed in the lead case i.e. W.P. (C) 7247/2007, to highlight the instances in paragraph MM to indicate that the candidates, who were found unsuitable in the interview have been found suitable upon review of their result, but no basis is disclosed as to how such candidates, who were earlier assessed to be dull and inactive, have been found suitable. So, it is submitted that entire process of re-absorption is vitiated. It is further submitted that the review of the result is unfair, which has resulted in invidious discrimination and so, the Tribunal has rightly directed petitioner-Bank to absorb respondents-Workmen. Reliance is placed upon Supreme Court's decision in *Hari Nandan Prasad and Another v. Employer I/R to Management of Food Corporation of India and Another,* (2014) 7 SCC 190 to submit that where it is found that similarly situated workmen are regularized by employer and the workmen in question, who had approached the Court, are at par with them, then direction for regularization of such case is justified, otherwise, non-regularization of left-over workmen would amount to invidious discrimination and thus, the directions issued by the Tribunal in the said decision for regularization were restored.

17. The precise submission of learned counsel for respondents-Workmen is that the plea of espousal and of Reference being time barred is conspicuously absent in the written statement filed by petitioner-Bank to the claim petition of respondents-Workmen and so, petitioner-Bank ought not to be allowed to raise such pleas in these writ petitions. Thus, it is submitted that writ petitions have no merit and they ought to be dismissed.

18. After having heard learned counsel for the parties at length and on perusal of impugned Award, evidence on record and the decisions cited, I find that non-adherence to the Bipartite Settlements of 1988 and 1991 is apparent on the face of it. The Tribunal has meticulously highlighted it. Relevantly, the six infirmities pointed out by the Tribunal in impugned Award render the review of result open to challenge. No objective reassessment of the result has been undertaken. It can be so said as respondents-Workmen in their counter affidavit have shown that they are on better footing than the candidates, who, upon review, have been found to be suitable.

19. So far as espousal of the cause is concerned, Section 2(k) of *the Industrial Disputes Act, 1947* is wide enough to enable respondents-Workmen to raise an industrial dispute as the subject matter relates to employment and non-employment. Supreme Court way back in 1966 in *Workmen of M/s. Dharam Pal Prem Chand (Saugandhi) v. M/s. Dharam Pal Prem Chand (Saugandhi)*, AIR 1966 SC 182 has declared that a dispute between a single workman and his employer can be brought within the scope of Section 2(k) of *the Industrial Disputes Act, 1947*.

20. As regards the Reference being time barred, it transpires from the record of this case that upon review of the result, no formal declaration was made by petitioner-Bank and so, on delay aspect, respondents-Workmen cannot be ousted. The non-reference to the earlier Bipartite Settlements of 17th November, 1987 and 16th July, 1988 by respondents-Workmen is of no consequence as their grievance relates to non-adherence to Bipartite Settlements of 1988 and 1991. Supreme Court in *Hari Nandan Prasad (supra)* has reiterated that adjudicator under *the Industrial Disputes Act, 1947* is empowered to give relief, which may not be permissible in common law or justified in terms of contract between the employer and workman. Therefore, impugned Award directing petitioner-Bank to absorb respondents-Workmen cannot be negated on the plea now taken in the writ petition of there being no vacancy to absorb respondents-Workmen.

21. In the considered opinion of this Court, impugned Award cannot be faulted with, on the plea of lack of *mala fides*. Such a view is taken because the review of results was in contravention of Bipartite Settlements of 1988 and 1991. Thus, respondents-Workmen are entitled to reconsideration of their case for absorption. It is true that a worker is not entitled to regularization merely because he has worked for the requisite period when no posts are available. However, in the facts and circumstances of this case, respondents-Workmen are entitled to objective reconsideration of their case for re-absorption. While sustaining the impugned Award, petitioner-Bank is directed to ensure that the case of respondents-Workmen is reconsidered afresh for absorption as and when the vacancy occurs and the needful be done strictly in terms of the

Bipartite Settlements of 1988 and 1991. It is expected that it will be so done within a period of 12 weeks or so from today.

22. So far as the relief claimed in W.P. (C) 8739/2009 regarding backwages and continuity of service is concerned, this Court finds that in view of there being no vacancy as of now, the relief sought in this petition cannot be granted. However, in the event of respondents-Workmen, including petitioners in W.P. (C) 8739/2009, being absorbed on reconsideration of their cases within the afore-stipulated period, the claim of writ petitioners in W.P. (C) 8739/2009 be also considered by petitioner-Bank within six weeks after such a Representation is made by respondents-Workmen and upon their being absorbed as workmen in the subordinate cadre of petitioner-Bank.

23. With aforesaid directions, the above-captioned writ petitions are disposed of.

(SUNIL GAUR)
JUDGE

APRIL 10, 2018
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